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STATE OF WASHINGTON

NO. 80214-9

FILED
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CLERK OF SUPREME COURT
STATE OF WASHINGTON

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

JEFF GRIFFIN,

Petitioner

v.

THURSTON COUNTY, and its BOARD OF HEALTH,
BRUCE CARTER, SHARI RICHARDSON, GEORGIA BICKFORD,
BARBARA BUSHNELL and JANE ELDER BOGLE,

Respondents,

**CARTER RESPONDENTS' ANSWER TO
GRIFFIN'S PETITION FOR REVIEW**

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TABLE OF CONTENTS

	<u>Page</u>
I. <u>INTRODUCTION</u>	1
II. <u>STATEMENT OF THE CASE</u>	1
A. Parties	1
B. Regulatory Framework	1
C. Pertinent Facts	3
III. <u>ARGUMENT</u>	5
A. Griffin's petition does not involve an issue of substantial public interest that should be determined by the Supreme Court	5
B. Griffin fails to refute the Court of Appeals decision that the plain meaning of the "meets all requirements" regulatory language bars the granting of waivers and setbacks for an OSS on an undersized lot	6
C. Griffin fails to sustain his burden of establishing unconstitutional vagueness	8
D. Griffin has no cognizable right, to benefit from or rely upon staff's administrative failure to comply with the TCSC in reviewing Griffin's sewer permit application	8
E. The vested rights doctrine, a choice of law principle, is inapplicable because there is no choice between laws or ordinances since none of the pertinent ordinances changed within the period between Griffin's purchase of the property and the decision of the Board of Health	10
F. Griffin has not offered a factual basis to establish "oppressive" loss in support of his substantive due process claim	11
IV. <u>CONCLUSION</u>	13

TABLE OF AUTHORITIES

	<u>Page</u>
<i>Buechel v. Dept of Ecology</i> , 125 Wn. 2d 196, 884 P. 2d 910 (1994).....	9
<i>Chelan County v. Nykreim</i> , 105 Wn. App. 339, <i>affirmed</i> , 146 Wn. 2d 904 (2002)	9
<i>Cobra Roofing v. Dep’t of Labor & Indus...</i> 157 Wn. 2d 90, 135 P. 3d 913 (2006).....	6
<i>East County Reclamation v. Bjornsen</i> , 125 Wn. App. 432, 105 P. 3d 93 (2005)	10
<i>Friends of the Law v. King County</i> , 123 Wn. 2d 518, 869 P. 2d 1056 (1994)	9, 10
<i>Guimont v. Clarke</i> , 121 Wn.2d 586, 854 P.2d 1 (1993), <i>cert. denied</i> , 510 U.S. 1176 (1994)	12
<i>In Re Det. of Rogers</i> , 117 Wn. App. 270, 71 P. 3d 220 (2003)	7-8
<i>Parkridge Associates, Ltd. v. Ledcor Indus. Inc.</i> , 113 Wn. App. 592, 54 P.3d 225 (2002)	6

Statutes and Regulations

RAP 13.4(b)	1
RCW 36.70C.040(2)(d).	1
RCW 36.70C.120 (2-3)	11
Section 21.4 Thurston County Sanitary Code (“TCSC”)	2, 4, 5, 6, 8
TCSC § 3	7
TCSC § 10	7

I. INTRODUCTION

The Griffin petition fails to meet the criteria of RAP 13.4(b) because the Court of Appeals decision is not in conflict with the Constitution or any decision of the Court of Appeals or the Supreme Court. This petition does not raise an issue of substantial public interest that should be determined by the Supreme Court. Any guidance that can be derived from this appeal is provided by the published and well reasoned decision of the Court of Appeals.

This answer includes the following four parts: 1. Introduction; 2. Statement of the case; 3. Arguments as to why the Supreme Court should deny the petition for review; and 4. Conclusion.

II. STATEMENT OF THE CASE

A. Parties

Shari Richardson, Jane Elder Bogle, Georgia Bickford, and Barbara Bushnell, represented by Bruce D. Carter, and Bruce D. Carter, appearing pro se (hereinafter the Carter parties) own Steamboat Island property adjoining Griffin's; they have statutory authorization to participate in this matter pursuant to the Land Use Petition Act. RCW 36.70C.040 (2) (d).

B. Regulatory Framework

The pertinent regulation restricting the permitting of on-site sewer systems on Griffin's vacant undersize waterfront building lot on Steamboat Island in Thurston County provides as follows:

21.4 The health officer may: . . .

21.4.5 Permit the installation of an OSS¹, where the minimum land area requirements or lot sizes cannot be met, only when all of the following criteria are met:

.....

21.4.5.1 The lot is registered as a legal lot of record created prior to January 1, 1995.

.....

21.4.5.3 The proposed system meets all requirements of these regulations other than minimum lot size. (Emphasis added)

Section 21.4 Thurston County Sanitary Code ("TCSC") amended June 1, 1999, App. p. 4-58 & 59.

Thurston County's Environmental Health Department also has in effect a June 12, 1998 policy guidance for undersize lots that limits the health officer's exercise of the discretionary "may" authority under 21.4.

¹ The Record on Review is comprised of the Report of Proceedings ("RP"), the Clerk's Papers ("CP") and the Administrative Record of Adjudicative Proceedings ("AR"). Other references will be On-Site sewer system ("OSS"), the Appendix attached to this brief containing portions of the Thurston County Sanitary Code (TCSC) will be described as ("App."), The Court of Appeals Decision ("CAD") and Griffin's Petition for Review ("GPR").

The guidance provides as follows:

The Health Officer may consider existing legal lots for single family dwelling purposes without considering the dwelling unit per acre issue. **The Health Officer may permit on-site sewage disposal on such lots if he/she finds that significant impact to ground and surface water or health hazards will not occur.** (emphasis added) AR. 17.

The guidance and the required finding were never addressed by staff in their case review or testimony.

C. Pertinent Facts

The Carter parties hereby adopt the Court of Appeals' statement of facts supplemented with three points set forth below.

First, before Mr. Griffin purchased lot 11 on approximately July 22, 2003, he and his realtor were on notice that Thurston County's Environmental Health Department had stated that tiny lot 11 was not buildable because the County would not issue a permit for a septic tank system on a parcel one-fourth the minimum lot size. The realtor's Tax Summary Report for lot 11 indicates as follows: "This lot is not buildable for residential purposes at this time per Thurston Co. Envior. [sic] Health. Recreation use only. ... Sold AS-IS, WHERE IS." AR 195. Similar advice was provided by the neighbors to the realtor for the benefit of Griffin prior to closing. AR 184-190. It is easily inferred from this circumstantial evidence that Mr. Griffin was told by his realtor that the property was unbuildable.

Second, Petitioner does not assert and the record does not reflect that the Thurston County's Environmental Health Department staff paid any heed to the "meets all requirements" language or the discretionary "may" in 21.4 TCSC or the departmental guidance. The initial administrative hearing was presided over by Hearing Officer Art Starry, the Environmental Health Director. AR 19, 37-45. Agency staff presented the case without mention of lot size, the discretionary authority in section 21.4, the "meets all requirements language" of section 21.4.5.3 or the finding required by the guidance. AR 233-238. On cross-examination, when the staff witness' attention was specifically directed to the term "may" in 21.4, he admitted that there was discretion under 21.4. AR 245. Thus, agency staff had apparently overlooked the 21.4 under-size lot issues that the Hearing Officer, the Board of Health and the Court of Appeals found dispositive. This example of low-level ineptitude should not be equated to policy, particularly when the Board of Health corrected the error when it was presented as a matter of first impression. AR 382, ¶ 2.

Third, when Griffin appealed to the Board of Health from the adverse decision of the Hearing Officer, the Carter parties, who prevailed before the hearing officer, applied, with the support of the Prosecuting Attorney, for permission to participate in the hearings before the Board of Health. AR 19, 37-45. 401-402, 403. The request to make arguments and question witnesses was denied, though permission to present materials was allowed. AR 404. A June 15 request to intervene and assert cross-appeal

was denied at the hearing by a 2-1 vote of the three- person Board because “it’s not timely.” AR 337, 406-08. The Carter parties were denied the right to question witnesses. AR 344, 348-49. The exclusion of the Carter parties from their due process rights to argue, present evidence and cross-examine witnesses at the Board of Health hearings was particularly troublesome because the County presented the question regarding the “all requirements language” of 21.4.5.3 TCSC without recommendation, offering the testimony of both the County’s proponents and opponents of the Hearing Officer’s decision. AR 3, ¶ 14.

The Carter parties have suffered no prejudice from this exclusion at this point because they agree with the Hearing Officer, the Board of Health and The Court of Appeals that the ‘meets all requirements’ language in 21.4.5.3 allows for no waivers or setbacks for septic systems on undersize lots.

III. ARGUMENT

A. Griffin’s petition does not involve an issue of substantial public interest that should be determined by the Supreme Court.

Griffin fails to state an issue of substantial public interest. The argument about hypothetical landowners’ situations in hypothetical counties with hypothetical views of the regulations is meritless because of the failure to establish his standing to argue the case of another county, that any county has applied his view of the “meets all requirements” language of 21.4.5.3 or that any county has even adopted identical

regulatory language. Any such aggrieved county could, of course, appear

Amicus.

- B. Griffin fails to refute the Court of Appeals decision that the plain meaning of the “meets all requirements” regulatory language bars the granting of waivers and setbacks for an OSS on an undersized lot.**

The Hearing Officer, the Board of Health and the Court of Appeals all denied the permit because the “meets all requirements” criterion of 21.4.5.3 TCSC prohibits the additional waivers and setbacks sought by Griffin. AR 1-6, 37-45.

The complete quotation from Griffin’s cited *Parkridge Associates* authority actually supports the Court of Appeal’s decision that the plain meaning of the term “all” is unequivocally broad and inclusive, allowing for no exceptions.

The dictionary defines the adjective “all” as meaning, variously, “being or representing the entire or total number, amount, or quantity,” “constituting, being, or representing the total extent or the whole,” “being the utmost possible of,” “every,” “any whatsoever,” and other, similarly comprehensive terms: (fn to Dictionary) **We do not read the word “all” or the phrase “of any kind” to imply an exception for equitable indemnity claims.** (Emphasis added)

Parkridge Associates, Ltd. V. Ledcor Indus. Inc., 113 Wn. App. 592, 602, 54 P.3d 225 (2002).

Griffin fails to discuss or challenge the Court of Appeals holding that allowing waivers and setbacks under the “all requirements” language would inappropriately render 21.4.5.3 TCSC meaningless and superfluous in contravention of principles of interpretation. *See CAD at 618, ¶ 17,*

Cobra Roofing v. Dep't of Labor & Indus., 157 Wn. 2d 90, 99, 135 P. 3d 913 (2006).

The Court of Appeals properly rejected petitioner's claim that the requested waivers and setbacks are readily available alternate equivalent requirements and thus included within the "meets all requirements" phrase in 21.4.5.3.

The TCSC gives the Department discretion to waive these requirements, but it does not list equivalent methods of compliance. See TCSC Section 10.1, table 1, and 11.4.1. Because Griffin mischaracterized the TCSC's structure, his argument that waivers are alternate means of satisfying TCSC requirements fails.

CAD, 137 Wn. App. 620 ¶ 11.

Griffin sought a number of setback reductions under Section 10.1, table 1 which provided for a standard setback, though it usually provided that the "health officer may" waive these requirements under certain limited circumstances. App. at 4-28, 29 & 30. Griffin concocted the unsupported theory that he was entitled to the discretionary setbacks as a matter of right and, thus, the discretionary setbacks are "equivalent alternates." The terms "alternate" and "equivalent" repeatedly used in Griffin's brief are not found in the pertinent regulations and the concepts were not argued, considered or decided by the Board of Health finders of fact. AR 385-386.

The "alternate" argument is predicated on the invalid assumption that "shall" and "may" are considered synonymous by Thurston County. (GPR at 3, fn. 1, citing to the unrelated CAD language at 137 Wn. App.

615, ¶ 6.) The terms are distinctly defined as discretionary (“may”) and mandatory (“shall”) in the regulations TCSC § 3, p.4-8, 4-11 (App at p.4-8, 4-11) and the case law *In Re Det. of Rogers*, 117 Wn. App. 270, 274-75, 71 P. 3d 220 (2003). The Court of Appeal’s conclusion that the waivers and setback reduction are not “alternate equivalents” is also supported by Board of Health Commissioner Diane Oberquell’s statement that, “[I]t was not the intent that all of those waivers and all of those reductions, if they were met, would allow for a septic system. . . .” AR 388.

Griffin offers no persuasive basis for reviewing the decisions of the Hearing Officer, Board of Health and Court of Appeals that “meets all requirements” criterion in 21.4.5.3 TCSC allows for no waivers or setback reductions.

C. Griffin fails to sustain his burden of establishing unconstitutional vagueness.

The vagueness claim is not proven beyond a reasonable doubt under the cited cases. Language cannot have a plain meaning and also be constitutionally vague. There is no suggestion that the Court of Appeals applied the wrong standard.

D. Griffin has no cognizable right to benefit from or rely upon staff’s administrative failure to comply with the TCSC in reviewing Griffin’s sewer permit application.

Griffin’s “taking” argument is predicated on the assumption that he is entitled to benefit from and rely upon the permit reviewing staff’s errors in failing to apply the plain meaning of the “all requirements” language of

TCSC 21.4.5.3. Griffin mis-characterizes these errors as a “rule of decision” or policy despite the fact that there was no evidence that the erroneous staff position was ever considered by anyone above the staff level, the review failed to comply with the Departmental guidance and the error was promptly corrected when it was presented to the Board of Health as a matter of first impression. AR 382, ¶ 2.

Griffin claims that this error had previously occurred, but it is uncertain whether the prior situation arose under the current regulation, whether it arose under the current guidance, or whether it involved waivers or setbacks.

In any event, staff errors in issuing permits are not binding precedent and confer no rights cognizable at law.

If a building permit is invalid, it is void and confers no rights. *Nolan v. Blackwell*, 124 Wash.504, 212 P. 1048 (1923). No rights may vest where an application for a building permit or the permit issued fails to conform to the zoning or building regulations. *Eastlake Cmty. Council v. Roanoke Assocs.*, 82 Wn. 2d 475, 481, 513 P.2d 36, 76 A.L.R.3d 360 (1973). A litigant has no right to benefit from unlawful administrative conduct when the public interest will suffer. *Id.* at 484. Significantly, the “evil” perpetrated by this disregard of legislation is the same regardless of whether the source of the invalidity is the wrongdoing of the applicant, the administrator, or both. *Id.* at 483-84. (emphasis added)

Chelan County v. Nykreim, 105 Wn. App. 339, 351, *affirmed*, 146 Wn. 2d 904 (2002). *See also, Buechel v. Dept of Ecology*, 125 Wn. 2d 196, 201 n.4, 884 P. 2d 910 (1994).

The rejection of the concept of beneficial reliance on staff errors or neglect is also reflected in Griffin's cited case of *Friends of the Law v. King County*, 123 Wn. 2d 518, 869 P.2d 1056 (1994).

We do not accept . . . [the] argument that [the ordinance] . . . has been altered through administrative neglect at face value. As we have stated before, '[t]he duty of those empowered to enforce the codes and ordinances of the [county] is to ensure compliance therewith and not to devise anonymous procedures available . . . in an arbitrary and uncertain fashion.' *Eastlake Comm'ty Coun. v. Roanoke Assocs., Inc.*, 82 Wn. 2d 475, 482, 513 P.2d 36, 76 A.L.R.3d 360 (1973). (Emphasis added)

Friends of the Law v. King County, *Id.* at 525.

Thus, the case law does not support petitioner's effort to capitalize and rely on administrative staff errors. The purpose of the appeals process is to review and correct such staff mistakes, not to reward the beneficiaries of such blunders.

E. The vested rights doctrine, a choice of law principle, is inapplicable because there is no choice between laws or ordinances since none of the pertinent ordinances changed within the period between Griffin's purchase of the property and the decision of the Board of Health.

"Vesting refers to the 'notion that a land use application, under the proper conditions, will be considered only under the land use statutes and ordinances in effect at the time of the application's submission.' *Friends of the Law v. King County*, 123 Wn. 2d 518, 522, 869 P.2d 1056 (1994)." *East County Reclamation v. Bjornsen*, 125 Wn. App. 432, 434, 105 P. 3d 93 (2005).

Here, the doctrine is inapplicable there was no change in any applicable regulation between Griffin's purchase of the property and the decision denying his permit.

Griffin relies on a distinguishable aspect of *Friends of the Law v. King County*, 123 Wn. 2d 518, 522, 869 P.2d 1056 (1994)."

There, staff practice was only considered upon a finding of ambiguity and confusion between different ordinances.

Although we find RCW 58.17.033 to be unambiguous in its requirements, we find the actual requirements for a fully completed application in King County at the time in question to be highly ambiguous. There was obvious confusion over which ordinance, if any, should define the requirements for a fully completed application for purposes of vesting. *Id.* at 525.

E. Griffin has not offered a factual basis to establish "oppressive" loss in support of his substantive due process

The Court of Appeals found that Griffin had failed to develop a full factual record necessary to decide the substantive due process claim which had previously been rejected by the Superior Court. Petitioner failed to assert any due process rights before the Board of Health where counsel asserted that obtaining a permit was just "possible." AR 355. When Griffin first raised the issue on his appeal to the Superior Court, he failed to offer evidence to support his due process claim or request a LUPA hearing to make a further record as allowed under RCW 36.70C.120(2-3). Thus, waiver has occurred because of the failure to

present evidence to support the claim that the undersize lot regulations are “unduly oppressive” in this case.

As the Court of Appeals found, the facts in the record are insufficient to sustain a substantive due process claim as unduly oppressive.

We determine if a statute is unduly oppressive by examining a number of nonexclusive factors to weigh the fairness of the burden being placed on the property owner:

On the public’s side, the seriousness of the public problem, the extent to which the owner’s land contributes to it, the degree to which the proposed regulation solves it and the feasibility of less oppressive solutions would all be relevant. On the owner’s side, the amount and percentage of value loss, the extent of remaining uses, past, present and future uses, temporary or permanent nature of the regulation, the extent to which the owner should have anticipated such regulation and how feasible it is for the owner to alter present or currently planned uses. *Presbytery*, 114 Wn.2d at 331 (citing *Stoebuck*, *San Diego Gas: Problems, Pitfalls and a Better Way*, 25 J. Urb. & Contemp. L. 3, 33 (1983)). (emphasis added)

Guimont v. Clarke, 121 Wn.2d 586, 610, 854 P.2d 1 (1993), *cert. denied*, 510 U.S. 1176 (1994).

Griffin has made no case of “oppressive” loss. The Board of Health adopted the Hearing Officer’s findings. (AR 1)

[I]t must be recognized that minimum land area and density are significant public health issues. It is well-recognized that even properly operating on-site systems discharge pollutants that can be detrimental to public health at some concentrations. AR 43.

Other expert and lay affidavits in the record support this finding regarding the public health significance of waterfront sewer systems. AR 196-198, 206-207, 208.

Griffin inaccurately cites Conclusion of Law 5, at GPR 20 for the proposition that there would be no "increased risk to public health" from his project when, in fact, his cited soils and wastewater reports approved in Conclusion 5 (AR 115-116, 106-11) contain no reference whatsoever to the effects of reducing minimum lot size by three-quarters on public health or the surface water. Ms. Palazzi's soils report pertained only to soil hydrology (groundwater) that might affect the septic systems. In the legend to the May 26, 2006 report, she disclaimed any position on "whether the site is large enough".

Please note that the following discussion is limited to the site hydrology, not the specific onsite soils, site or septic system design characteristics. ... Neither do we comment on whether the site is large enough to support any particular system design. That part of the discussion should come from the system/site designer. Palazzi Soils Letter AR 108-109.

Griffin, his realtor, the prior owner and the neighbors were all aware that the property was considered "unbuildable" before Griffin bought it. AR 184-190. With the property being listed and sold to Griffin "AS-IS" "unbuildable" at an "unbuildable" recreational property price, its

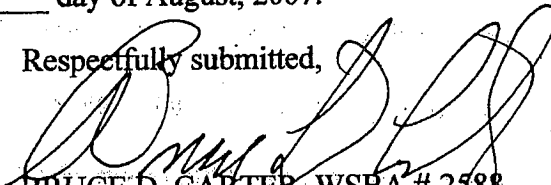
status remains the same today, and there has been no demonstrated “oppressive” change in the value or pre-existing recreational use of the property. Griffin failed in his speculative gamble to develop “unbuildable” property and has failed to develop any record of an “oppressive” loss as required for a substantive due process claim

IV. CONCLUSION

Griffin’s petition should be denied because he has failed to establish any issue of substantial public interest or any conflict with Washington case law or the Constitution.

DATED this 16th day of August, 2007.

Respectfully submitted,


BRUCE D. CARTER, WSBA # 2588
Attorney for Respondent Carter Parties

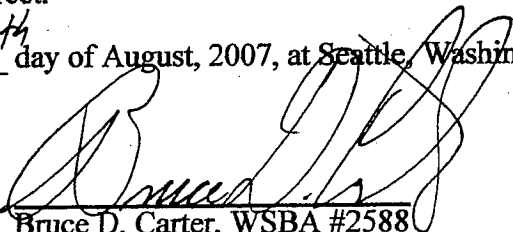
CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of Carter Respondents' Answer to Griffin's Petition for Review was served on August 16, 2007, on the following individuals by depositing the same in the United States Mail with postage paid, addressed to the following:

1. Elizabeth Petrich & Jane Futterman
Prosecuting Attorney's Office, Civil Division
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2. Matthew B. Edwards
Owens Davies, P.S.
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED this 16th day of August, 2007, at Seattle, Washington.


Bruce D. Carter, WSBA #2588

APPENDIX

SELECTED SECTIONS FROM ARTICLE IV

RULES AND REGULATIONS OF THE THURSTON COUNTY BOARD OF HEALTH

GOVERNING DISPOSAL OF SEWAGE

A. Table of Contents of Article IV and. Sections 1-4	Pages 4-1 through 4-15
B. Sections 9-11.....	Pages 4-22 through 4-32
C. Sections 18-22.....	Pages 4-53 through 4-61



ARTICLE IV
RULES AND REGULATIONS OF THE
THURSTON COUNTY BOARD OF HEALTH
GOVERNING DISPOSAL OF SEWAGE

<u>SECTION</u>	<u>PAGE NO.</u>
1 PURPOSE, OBJECTIVES, AND AUTHORITY	4-3
2 ADMINISTRATION	4-3
3 DEFINITIONS	4-3
4 APPLICABILITY AND GENERAL REQUIREMENTS	4-13
5 ALTERNATIVE SYSTEMS AND PROPRIETARY DEVICES	4-15
6 EXPERIMENTAL SYSTEMS	4-16
7 CONNECTION TO PUBLIC SEWER SYSTEM	4-18
8 LARGE ON-SITE SEWAGE SYSTEMS (LOSS)	4-19
9 OSS UNDER 3500 GALLONS PER DAY	4-22
10 LOCATION	4-28
11 SOIL AND SITE EVALUATION	4-32
12 DESIGN	4-36
13 HOLDING TANK SEWAGE SYSTEMS	4-42
14 INSTALLATION	4-43
15 INSPECTION	4-44
16 OPERATION AND MAINTENANCE	4-47
17 REPAIR OF FAILURES AND MODIFICATIONS OF EXISTING SYSTEMS	4-50
18 EXPANSIONS	4-53
19 ABANDONMENT	4-53

Thurston County Board of Health
Rules and Regulations Governing Disposal of Sewage
Article IV

<u>SECTION</u>	<u>PAGE NO.</u>
20 SEPTAGE MANAGEMENT.....	4-53
21 DEVELOPMENTS, SUBDIVISIONS, AND MINIMUM LAND AREA REQUIREMENTS.....	4-53
22 AREAS OF SPECIAL CONCERN.....	4-60
23 CERTIFICATION OF DESIGNERS, INSTALLERS, PUMPERS, INSPECTORS, AND MAINTENANCE PERSONNEL.....	4-61
24 WAIVER OF REGULATIONS.....	4-73
25 ENFORCEMENT.....	4-74
26 CIVIL INFRACTIONS AND PENALTIES.....	4-75
27 APPEALS.....	4-76
28 SEVERABILITY.....	4-81

ARTICLE IV
RULES AND REGULATIONS OF THE THURSTON COUNTY BOARD OF HEALTH
GOVERNING DISPOSAL OF SEWAGE

SECTION 1 PURPOSE, OBJECTIVES, AND AUTHORITY.

- 1.1 The purpose of this article is to protect the public health by:
 - 1.1.1 Minimizing the potential for public exposure to sewage from on-site sewage systems; and
 - 1.1.2 Minimizing adverse effects to public health that discharges from on-site sewage systems may have on ground and surface waters; and
 - 1.1.3 Setting conditions for the withdrawal or revocation of approvals, for the cessation of use of on-site sewage systems and for the elimination of health hazards; and
 - 1.1.4 Setting conditions of project approval for integration with other water quality, land use, and wastewater management plans.
- 1.2 This article regulates the location, design, installation, operation, maintenance, and monitoring of on-site sewage systems to:
 - 1.2.1 Achieve long-term sewage treatment and effluent disposal; and
 - 1.2.2 Limit the discharge of contaminants to waters of the state.
- 1.3 This article is adopted by the Thurston County Board of Health in accordance with the authority granted in 70.05 RCW and WAC 246-272 to establish minimum requirements for the treatment and disposal of sewage and the regulation of on-site sewage disposal systems.

SECTION 2 ADMINISTRATION.

The health officer shall administer this article under the authority and requirements of chapter 70.05 RCW and WAC 246-272. Under chapter 70.05.060(7) RCW, fees may be charged for this administration.

SECTION 3 DEFINITIONS

As used in this article, the terms defined in this section shall have the meanings indicated unless the context clearly indicates otherwise.

"Addition" means any proposed building activity that will not increase sewage flows but will result in an increase in the square footage of:

- (a) Living space (other than number of bedrooms) outside the envelope (the exterior shell) of the structure's existing living space for residential structures. This includes the construction of a garage or outbuildings on a parcel containing a residential structure.
- (b) The structure outside the envelope (the exterior shell) of the existing structure for non-residential structures.

"Additive" means a commercial product added to an on-site sewage system intended to affect performance or aesthetics of an on-site sewage system.

"Alternative system" means an on-site sewage system other than a conventional gravity system or conventional pressure distribution system. Properly operated and maintained alternative systems provide equivalent or enhanced treatment performance as compared to conventional gravity systems.

"Approved" means a written statement of acceptability, in terms of the requirements in this article, issued by the health officer or the secretary.

"Approved list" means "List of Approved Systems and Products", developed annually and maintained by the secretary and containing the following:

- (a) List of proprietary devices approved by the secretary;
- (b) List of specific systems meeting treatment standard 1 and treatment standard 2;
- (c) List of experimental systems approved by the secretary;
- (d) List of septic tanks, pump chambers, and holding tanks approved by the secretary.

"Area of special concern" means an area of definite boundaries delineated through public process, where the board of health, or the secretary in consultation with the health officer, determines additional requirements for on-site sewage systems may be necessary to reduce potential failures, or minimize negative impact of on-site systems upon public health.

"Board of Health" means the Thurston County Board of Health established pursuant to 70.05.030 RCW.

"Building Sewer" means the tightline between the building stub-out and the inlet of the septic tank.

"Cesspool" means a pit receiving untreated sewage and allowing the liquid to seep into the surrounding soil or rock.

"Community On-site Sewage System (COSS)" means any on-site sewage system designed to serve more than one single family residence and/or with a design flow, at any common point, more than one thousand (1,000) gallons per day and less than or equal to three thousand five hundred (3,500) gallons per day, except when dealing with issues and proposals within the designated Thurston County Urban Growth Management Area and/or covered by the Thurston County Sewerage General Plan, the lower design limit shall be six hundred (600) gallons per day.

"Conforming system" means any on-site sewage system, except an experimental system, that meets any of the following criteria:

- (a) The system is in full compliance with all requirements for new construction as specified in this article, including the provision of a reserve area. This includes:
 - (i) A repair system that meets the requirements for new construction as specified in this article; or
 - (ii) A new or repair system was permitted, but a waiver had to be obtained as per section 24 of this article; or
- (b) The system is an existing on-site sewage system approved, installed, and operated under a previous edition of this article; or
- (c) The system or repair was permitted through the waiver process which assure public health protection by higher treatment performance or other methods; or
- (d) The system is existing, not in failure, and its use is consistent with its size and design, and, where required, is in full conformance with a valid operational certificate.

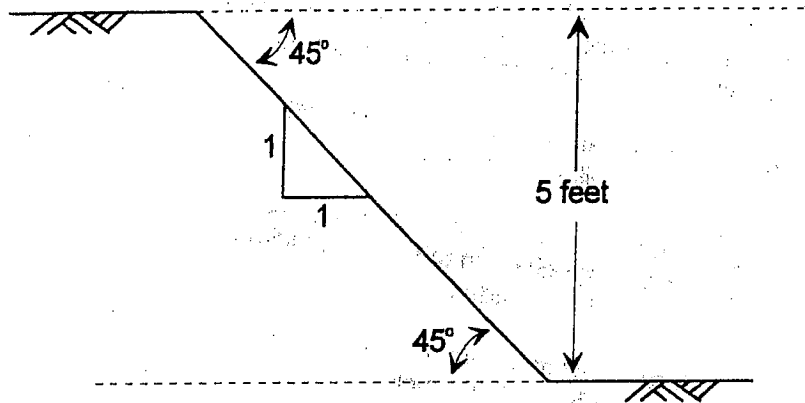
"Conventional gravity system" means an on-site sewage system consisting of a septic tank and a subsurface soil absorption system with gravity distribution of the effluent.

"Conventional pressure distribution system" means an on-site sewage system consisting of a septic tank and a subsurface soil absorption system with pressure distribution of the effluent. The acceptable design, operation and maintenance, and performance monitoring requirements are described in "Guidelines for Pressure Distribution Systems" by the Washington state department of health, September 1984, as thereafter updated.

"Covenant" means an agreement recorded with the Thurston County Auditor stating certain activities and/or practices are required or prohibited.

"Cover" means soil material that is used to cover a subsurface disposal area.

"Cut or bank" means any naturally occurring or artificially formed slope greater than one hundred percent (forty-five degrees) as follows:



"Department" means the Thurston County Public Health and Social Services Department.

"Design" means a detailed on-site sewage system plan developed in accordance with section 12 of this article and containing the details outlined in section 9.1.4.

"Design Firm" means a firm certified by the health officer to design on-site sewage systems in Thurston County.

"Designer" means an engineer, a registered sanitarian, or a person who is certified by the health officer to perform site and soils evaluations and to develop and submit designs by matching site and soil characteristics with appropriate on-site sewage technology, who is employed by a design firm, and who maintains the continuing education requirements described in this article.

"Development" means the creation of a residence, structure, facility, mobile home park, subdivision, planned unit development, site, area, or any activity resulting in the production of sewage.

"Disposal component" means a subsurface absorption system (SSAS) or other soil absorption system receiving septic tank or other pretreatment device effluent and transmitting it into original, undisturbed soil.

"Effluent" means liquid discharged from a septic tank or other on-site sewage system component.

"Engineer" means a person who is licensed and in good standing under chapter 18.43 RCW.

"Expansion" means a change in a residence, facility, site, or use that:

- (a) Results in an increase in the strength of the sewage or in the average daily volume of sewage that may cause an on-site sewage system to exceed its existing treatment or disposal capability. Examples include, but are not limited to, when the number of bedrooms in a residence is increased, or a change in use from an office to a restaurant or from a residential use to a commercial use; or
- (b) Reduces the treatment or disposal capability of the existing on-site sewage system or the reserve area, for example, when a building is placed over existing system components or a reserve area.

"Experimental system" means any alternative system:

- (a) Without design guidelines developed by the secretary; or
- (b) A proprietary device or method which has not yet been evaluated and approved by the secretary.

"Failure" means a condition of an on-site sewage system that threatens the public health by inadequately treating sewage or by creating a potential for direct or indirect contact between sewage and the public. Examples of failure include:

- (a) Sewage on the surface of the ground;
- (b) Sewage discharged directly to surface water or upon the surface of the ground unless the discharge is under permit from the Washington state department of ecology. This does not apply to septage or sewage sludge handled under a valid permit issued in accordance with article V of this code;
- (c) Sewage backing up into a structure caused by slow soil absorption of septic tank effluent;
- (d) Sewage leaking from a septic tank, pump chamber, holding tank, or collection system;
- (e) Inadequately treated effluent contaminating ground water or surface water. This may be demonstrated upon testing by currently adopted sanitary survey procedures, where the following occurs: (1) positive tracing dye results and (2) a fecal coliform count of at least 200 organisms per 100 milliliters OR above established background concentrations at a sampling point (pipe, drainage channel, seep) from which a direct discharge to surface or ground water or to the surface of the ground occurs;

Thurston County Board of Health
Rules and Regulations Governing Disposal of Sewage
Article IV

- (f) Surface or ground water intrusion into a septic tank, pump chamber, holding tank, or collection system;
- (g) Cesspools;
- (h) Seepage pits where site specific evidence of ground or surface water quality degradation exists.

"Ground water" means a subsurface water occupying the zone of saturated soil, permanently, seasonally, or as the result of the tides. Indications of ground water may include:

- (a) Water seeping into or standing in an open excavation from the soil surrounding the excavation; or
- (b) Spots or blotches of different color or shades of color interspersed with a dominant color in soil, commonly referred to as mottling. Mottling is a historic indication for the presence of groundwater caused by intermittent periods of saturation and drying, and may be indicative of poor aeration and impeded drainage. Also see "Water table".

"Health officer" means the Thurston County health officer, or a representative authorized by and under the direct supervision of the health officer, as defined in chapter 70.05 RCW.

"Holding tank sewage system" means an on-site sewage system which incorporates a holding tank, the services of a sewage pumper/hauler, and the off-site treatment and disposal for the sewage generated.

"Industrial wastewater" means the water or liquid carried waste from an industrial process. These wastes may result from any process or activity of industry, manufacture, trade or business, from the development of any natural resource, or from animal operations such as feedlots, poultry houses, or dairies. The term includes contaminated storm water and leachate from solid waste facilities.

"Installation firm" means a firm certified by the health officer to install, modify, or repair an on-site sewage system or any of its components in accordance with the provisions contained in this article.

"Installer" means a person meeting the requirements of section 23 of this article.

"Large on-site sewage system (LOSS)" means any on-site sewage system with design flows, at any common point, greater than 3,500 gallons per day.

"May" means discretionary, permissive, or allowed.

"Minor repair" means the repair of one of the following on-site sewage system components: tightline pipe between a structure and a septic tank; tightline between a

septic tank and the disposal component; a pump; or an interceptor drain. It shall also include the replacement of a small section of the SSAS damaged as the result of digging into it as part of a system evaluation.

"Modification" means an alteration to an on-site sewage system that is not the result of new construction, a repair, or an expansion.

"Monitoring firm" means a firm certified by the health officer to operate, maintain, and/or monitor an on-site sewage system.

"Monitoring specialist" means a person meeting the requirements of section 23 of this article.

"Non-conforming system" means an on-site sewage system which is not in failure but which is: not in compliance with the conditions stipulated on the On-site Sewage System Application; or not being operated consistent with its size and design; or is not in full conformance with a valid operational certificate where one is required. A repair which is placed in the originally designated reserve area shall be considered a conforming system as long as the system is not in failure.

"On-site sewage system (OSS)" means an integrated arrangement of components for a residence, building, industrial establishment or other places not connected to a public sewer system which:

- (a) Convey, store, treat, and/or provide subsurface soil treatment and disposal on the property where it originates, upon adjacent or nearby property; and
- (b) Includes piping, treatment devices, other accessories, and soil underlying the disposal component of the initial and reserve areas.

"On-site Sewage System Application (OSSA)" means an application, including a site plan and design, by which the health officer shall evaluate and may approve or disapprove a particular lot or tract of land for the installation, modification, or repair of an on-site sewage system.

"On-site Sewage System Permit (OSSP)" means a permit issued by the health officer after reviewing and concluding an On-site Sewage System Application meets all the requirements of this article. This permit grants authority to the permit holder to install an on-site sewage system in accordance with the approved design.

"Operational Certificate" means a certificate issued for a specified period by the health officer to a person for the operation and/or use of an on-site sewage system. The operational certificate shall contain conditions for the operation, maintenance, and monitoring of the subject on-site sewage system.

"Ordinary high-water mark" means the mark on lakes, streams, and tidal waters, found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to

mark upon the soil a character distinct from that of the abutting upland with respect to vegetation, as that condition exists on the effective date of this article, or as it may naturally change thereafter. The following definitions apply where the ordinary high water mark cannot be found:

- (a) The ordinary high-water mark adjoining marine water is the elevation at mean higher high tide; and
- (b) The ordinary high-water mark adjoining freshwater is the line of mean high water.

"Person" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any governmental agency, or the authorized agents of any such entities.

"Planned unit development" means a development characterized by a unified site design, clustered residential units and/or commercial units, and areas of common open space.

"Preliminary design" means a detailed design required by the health officer prior to preliminary or final plat approval to evaluate whether a proposed lot or lots can meet the site and location requirements of this article.

"Pressure distribution" means a system of small diameter pipes equally distributing effluent throughout a trench or bed, as described in the "Guidelines for Pressure Distribution Systems" by the Washington state department of health, September 1984, as thereafter updated. Also see "conventional pressure distribution."

"Proprietary device or method" means a device or method classified as an alternative system, or a component thereof, held under a patent, trademark or copyright.

"Public sewer system" means a sewerage system:

- (a) Owned or operated by a city, town, municipal corporation, county, or other approved ownership consisting of a collection system and necessary trunks, pumping facilities and a means of final treatment and disposal; and
- (b) Approved by or under permit from the Washington state department of ecology, the Washington state department of health and/or the Thurston County health officer.

"Pumper" means a person meeting the requirements of section 23 of this article.

"Pumping firm" means a firm certified by the health officer to remove and transport wastewater or septage from on-site sewage systems.

"Registered Sanitarian" means a person who is licensed and in good standing with the Washington State Board of Registered Sanitarians.

"Repair" means restoration, by reconstruction, addition to, or modification or replacement of an existing on-site sewage system or component of the system due to failure.

"Reserve area" means an area of land approved for the installation of an OSS and dedicated for replacement of the OSS upon its failure.

"Resident Owner" means a person who after demonstrating competency designs, installs, or repairs an on-site sewage system for a single-family residence owned and occupied or to be owned and occupied by him/her. A resident owner is limited to designing, installing, or repairing a limit of one on-site sewage system per two-year period.

"Residential sewage" means sewage having the constituency and strength typical of wastewater from domestic households. Some typical values for residential sewage prior to entering a septic tank are: 5-day biochemical oxygen demand (BOD₅) - 230 mg/l; total suspended solids (TSS) - 250 mg/l; and total nitrogen - 40 to 50 mg/l as N.

"Restrictive layer" means a stratum impeding the vertical movement of water, air, and/or growth of plant roots, such as hardpan, claypan, fragipan, caliche, some compacted soils, bedrock and unstructured clay soils. This also includes a water table.

"Secretary" means the Secretary of the Washington state department of health and his/her authorized representative.

"Seepage pit" means an excavation more than three feet deep where the sidewall of the excavation is designed to dispose of septic tank effluent.

"Septage" means the mixture of solid wastes, scum, sludge, and liquids pumped from within septic tanks, pump chambers, holding tanks, and other OSS components.

"Septic tank" means a watertight pretreatment receptacle receiving the discharge of sewage from a building sewer or sewers, designed and constructed to permit separation of settleable and floating solids from the liquid, detention and anaerobic digestion of the organic matter, prior to discharge of the liquid.

"Sewage" means any urine, feces, and the water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places. For the purposes of these regulations, "sewage" is generally synonymous with domestic wastewater. Also see "residential sewage."

"Shall" means mandatory.

"Site Plan" means a to-scale drawing of a residential or non-residential project proposed on a parcel. This drawing includes all plan detail relating to property access; drinking water and wastewater system components; designated building envelope(s); setbacks; zoning, critical areas, and other planning issues; and other pertinent aspects depending on the specific proposal.

"Soil log" means a detailed description of soil characteristics providing information on the soil's capacity to act as an acceptable treatment and disposal medium for sewage.

"Soil type" means a numerical classification of fine earth particles and coarse fragments as described in subsection 11.2.5.

"Subdivision" means a division of land or creation of lots or parcels, described under chapter 58.17 RCW, now or as hereafter amended, including both long and short subdivisions, planned unit developments, and mobile home parks.

"SSAS" or "subsurface soil absorption system" means a system of trenches three feet or less in width, or beds between three and ten feet in width, containing distribution pipe within a layer of clean gravel designed and installed in original, undisturbed soil for the purpose of receiving effluent and transmitting it into the soil.

"Surface water" means any body of water, whether fresh or marine, flowing or contained in natural or artificial unlined depressions continuously for at least four consecutive months, including natural and artificial lakes, ponds, springs, rivers, streams, swamps, marshes, and tidal waters.

"Treatment standard 1" means a thirty-day average of less than 10 milligrams per liter of biochemical oxygen demand (5 day BOD₅), 10 milligrams per liter of total suspended solids (TSS), and a thirty-day geometric mean of less than 200 fecal coliform per 100 milliliters.

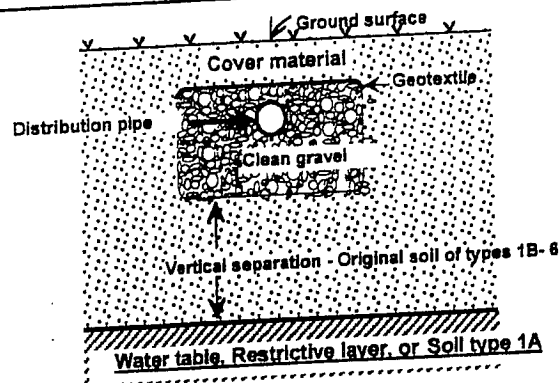
"Treatment standard 2" means a thirty-day average of less than 10 milligrams per liter of biochemical oxygen demand (5 day BOD₅), 10 milligrams per liter of total suspended solids (TSS), and a thirty-day geometric mean of less than 800 fecal coliform per 100 milliliters.

"Uniform Plumbing Code" means the Uniform Plumbing Code as adopted by Thurston County.

"Unit volume of sewage" means:

- (a) A single family residence;
- (b) A mobile home site in a mobile home park; or
- (c) 450 gallons of sewage per day where the development is not single family residences or a mobile home park.

"Vertical separation" means the depth of unsaturated, original, undisturbed soil of soil types 1B-6 between the bottom of a disposal component and the highest seasonal water table, a restrictive layer, or soil type 1A, as illustrated below by the profile drawing of a subsurface soil absorption system:



"Water table" means the upper surface of the ground water, whether permanent or seasonal. Also see "ground water."

"Wave barrier" means a bulkhead of adequate height and construction protecting the immediate area of on-site sewage system components from wave action.

SECTION 4 APPLICABILITY AND GENERAL REQUIREMENTS

4.1 The health officer:

4.1.1 Shall apply this article to OSS treating wastewater and disposing of effluent from residential sewage sources;

4.1.2 Shall apply this article to OSS for sources other than residential sewage, excluding industrial wastewater, if pretreatment, siting, design, installation, and operation and maintenance measures provide treatment and effluent disposal equal to that required of residential sewage.

4.1.3 Shall not apply the location and design requirements in this article to any OSS existing as of the effective date of this article, except when one of the following is proposed:

4.1.3.1 A repair - requirements in section 17 of this article must be met;

4.1.3.2 A modification - requirements in section 17 of this article must be met;

4.1.3.3 An expansion - As noted in section 18 of this article, new construction standards as defined in this article must be met; or

- 4.1.3.4 An addition - must be served by a conforming OSS and the addition shall not reduce the potential for a repair to the OSS should it fail in the future.
- 4.1.4 Shall apply requirements consistent with sewerage, water quality and waste management plans to proposed systems. These systems may be required to be abandoned and connection to sewer for water quality or health hazard cause or when sewer is available, in accordance with section 7.
- 4.2 Preliminary plats specifying general methods of sewage treatment, disposal, system designs and locations approved prior to the effective date of these regulations shall be acted upon in accordance with regulations in force at the time of preliminary plat approval for a maximum period of five years from the date of approval or until January 1, 1996, whichever assures the most lenient expiration date.
- 4.3 A complete, valid, unexpired OSSA submitted, but not approved, prior to the effective date of these regulations:
 - 4.3.1 Shall be acted upon in accordance with regulations in force at the time of application submittal;
 - 4.3.2 May be modified to include additional requirements if the health officer determines that a serious threat to public health exists.
- 4.4 A valid, unexpired OSSA/OSSP (other than for a repair) approved prior to January 1, 1995 shall have a validity period of five years from the date of approval or remain valid until January 1, 1996, whichever assures the most lenient expiration date.
- 4.5 The Washington state department of ecology has authority and approval over:
 - 4.5.1 Domestic or industrial wastewater under chapter 173-240 WAC; and
 - 4.5.2 Sewage systems using mechanical treatment, or lagoons, with ultimate design flows above 3,500 gallons per day.
- 4.6 The Washington state department of health has authority and approval over any Large On-site Sewage System, "LOSS", for which jurisdiction has been transferred to the department of health under conditions of memorandum of agreement with the department of ecology.
- 4.7 The health officer has authority and approval over systems with design flows through any common point up to 3,500 gallons per day and via contract with the secretary up to 14,500 gallons per day.

Thurston County Board of Health
Rules and Regulations Governing Disposal of Sewage
Article IV

- 4.8 Where this article conflicts with chapters 90.48 RCW, Water Pollution Control, the requirements under those statutes apply.
- 4.9 Every residence, place of business or other building where persons congregate, reside or are employed, to which a public sewer system is not physically accessible or available, shall be provided with a water-flush toilet or approved alternative device and shall be connected to a conforming on-site sewage system which shall be operated and maintained in such a manner to meet the requirements of this article. Other places where persons congregate (and no building exists) shall be provided with adequate sewage disposal facilities/devices as may be appropriate to protect the public health.
- 4.10 Sewage from any on-site sewage system or any other source shall not be discharged to surface water, upon the surface of the ground, or managed in any manner so as to constitute a failure as defined by this article. This requirement shall not apply to septage or sewage treatment plant waste discharged in accordance with a permit from the Washington State Department of Ecology or a permit issued pursuant to article V of this code.
- 4.11 Refusal, failure or neglect to comply with any notice or order of the health officer issued pursuant to this article shall be considered a violation of this code.
- 4.12 Whenever it is brought to the attention of the health officer that any unsanitary conditions exist or that any construction or work regulated by these rules and regulations is dangerous, unsafe, unsanitary, or a menace to life, health or property, or otherwise in violation of these regulations, the health officer shall investigate and upon determining the information to be factual, shall order any person using or maintaining any such condition or responsible for the use thereof to repair, alter, change, remove or demolish the same as the health officer may consider necessary for the proper protection of life, health or property. The health officer may also require vacation of the premises until the violation or nuisance is abated or corrected.
- 4.12.1 Any such order of the health officer shall be in writing, addressed to the owner, agent, or person responsible for the premises on which the condition exists and shall specify the date or time for compliance with such order.
- 4.12.2 Refusal, failure or neglect to comply with any such notice or order of the health officer shall be considered a violation of these regulations.

SECTION 5 ALTERNATIVE SYSTEMS AND PROPRIETARY DEVICES.

- 5.1 The health officer shall only permit installation of alternative systems for which there are alternative system guidelines issued by the Washington state department of health, or a proprietary device if it appears on the list of approved

8.7 Before a new LOSS is used:

8.7.1 An engineer shall stamp, sign, and submit a LOSS construction report to the health officer within sixty days following the completion of construction of the LOSS including:

8.7.1.1 A completed form stating the LOSS was constructed in accordance with the health officer's approved plans and specifications; and

8.7.1.2 An "as built" or "record" drawing.

8.7.2 The health officer shall conduct a final inspection.

8.7.3 The owner shall:

8.7.3.1 Submit to the health officer for review and approval a final operation and maintenance manual, developed by an engineer, for the installed LOSS, containing any amendments to the draft manual submitted prior to approval; and

8.7.3.2 Obtain a LOSS operating certificate from the department in accordance with the provisions of Section 16 of this article.

8.8 The owner of a LOSS that has been approved by the health officer or constructed after July 1, 1984, shall:

8.8.1 Obtain a LOSS operating certificate from the health officer; and

8.8.2 Renew it annually.

8.9 The owner shall renew annually the LOSS operating certificate in accordance with the provisions of Section 16 of this article.

SECTION 9 OSS UNDER 3500 GALLONS PER DAY.

9.1 Prior to beginning the installation of an OSS or component thereof, a person proposing the installation, repair (excluding a minor repair), or modification to an OSS shall submit a complete OSSA to the health officer and obtain an OSSP. The OSSA shall contain the following, at a minimum:

9.1.1 General information including:

9.1.1.1 Name and address of the property owner and the applicant, if different; and

Thurston County Board of Health
Rules and Regulations Governing Disposal of Sewage
Article IV

- 9.1.1.2 Parcel number, address, if available, and the legal description of the site; and
- 9.1.1.3 Source of drinking water supply. If the source is a public water supply, the name and state identification number shall be included; and
- 9.1.1.4 Identification if the property is within the boundaries of a recognized sewer utility; and
- 9.1.1.5 Size of the parcel; and
- 9.1.1.6 Type of approval for which application is being made, for example, new installation, expansion, repair, or modification; and
- 9.1.1.7 Source of sewage, for example, residential, restaurant, or other type of business; and
- 9.1.1.8 Location of utilities; and
- 9.1.1.9 Name of the designer; and
- 9.1.1.10 Date of application; and
- 9.1.1.11 Signature of applicant.
- 9.1.2 The soil and site evaluation as specified under section 11.2 of this article.
- 9.1.3 A complete, detailed, and dimensional site plan including:
 - 9.1.3.1 Designated areas for the proposed initial and reserve systems; and
 - 9.1.3.2 The location of all soil logs and other soil tests for the OSS; and
 - 9.1.3.3 General topography and/or slope of the site; and
 - 9.1.3.4 Site drainage characteristics; and
 - 9.1.3.5 The location of existing and proposed encumbrances affecting system placement, including legal easements and access documents if any component of the OSS is not on the lot where the sewage originates. Copies of easements and their recording numbers must be furnished when such

Thurston County Board of Health
Rules and Regulations Governing Disposal of Sewage
Article IV

- easements are necessary for the health officer's approval of the disposal system; and
- 9.1.3.6 Location, size, shape and placement of all existing buildings on the site showing their relationship to the on-site sewage disposal systems, wells, underground and surface storage tanks, swimming pools, water supply lines, property lines and easements; and
- 9.1.3.7 The location of all wells on the subject property and on adjacent properties within one hundred (100) feet of the property lines; and
- 9.1.3.8 Any septic tank and drainfield locations on the subject property and also any on-site sewage disposal system location on adjacent property within one hundred (100) feet of any existing or proposed wells on the applicant's site; and
- 9.1.3.9 Direction of flow and discharge point of all surface and subsurface water interception drains and ditches; and
- 9.1.3.10 Location, size and shape of area in which on-site sewage disposal system is to be installed; distances from designated area to any cuts, banks, terraces, foundations, property lines, wells (including those on neighboring property), lakes, streams, swamps, marshes, salt water beaches, driveways, walkways, patios, water lines, drainage ditches or fills shall be indicated; and
- 9.1.3.11 Location of soil log holes or sieve sample holes shall be spaced uniformly over the proposed drainfield site and reserve area. The holes shall be identified by numbers. At least three (3) soil logs (2 in the proposed primary drainfield area and 1 in the proposed reserve area) shall be required for each lot. Additional soil logs may be required by the health officer as deemed necessary. The number of soil logs may be reduced if adequate soils information is available. Soil logs shall be provided in sufficient numbers or detail to allow the determination of any restrictive layer; and
- 9.1.3.12 If the property has been platted, the application shall contain the lot number and the short or large lot plat number or the plat name if a long plat. Additionally, if there have been any other land use actions pertaining to the lot, the appropriate land use action number shall be included; and

- 9.1.3.13 An arrow indicating north; and
- 9.1.3.14 Information required by other local agencies.
- 9.1.4 A detailed system design meeting the requirements under section 12 of this article including all of the following:
 - 9.1.4.1 A dimensional drawing showing the location of components of the proposed OSS, and for the reserve area if reserve site characteristics differ significantly from the initial area;
 - 9.1.4.2 Vertical cross-section drawings showing:
 - 9.1.4.2.1 The depth of the disposal component, the vertical separation, and depth of soil cover; and
 - 9.1.4.2.2 Other OSS components constructed at the site.
 - 9.1.4.3 Calculations and assumptions supporting the proposed design, including:
 - 9.1.4.3.1 Soil type; and
 - 9.1.4.3.2 Hydraulic loading rate in the disposal component; and
 - 9.1.4.3.3 System's maximum daily flow capacity.
- 9.1.5 Using a bench mark that will remain in place throughout the development of the project as the reference point, relative elevations of the plumbing stub-out, the finished ground elevation of the drainfield area and the corners of the subject property and elevation of the drainfield trenches.
- 9.1.6 Directions of surface drainage after final grading.
- 9.1.7 Results of all required soil logs and soil analysis.
- 9.1.8 Drawings that are to scale with dimensions indicated. Recommended scale is one (1) inch equals twenty (20) feet or one (1) inch equals thirty (30) feet. Other scales may be used as appropriate to the design and approved by the health officer. Accuracy in the design drawings shall be sufficient for review.
- 9.1.9 Indication that the drainfield laterals are staked in the field for inspection and review.

Thurston County Board of Health
Rules and Regulations Governing Disposal of Sewage
Article IV

- 9.1.10 Such additional information as deemed necessary by the health officer.
- 9.2 For a "minor repair" no OSSA or OSSP is necessary.
- 9.3 The health officer shall:
 - 9.3.1 Issue an OSSP when the information submitted under subsection 9.1 meets the requirements contained in this article.
 - 9.3.2 Charge a fee for reviewing an OSSA and issuing an OSSP in accordance with the fee schedule contained in Appendix A of Article I.
 - 9.3.3 Specify the expiration date on the OSSA:
 - 9.3.3.1 For any proposal other than a repair, an OSSA shall expire one year after the date of application. This period may be extended for a single one year period without charge, if specifically requested by the applicant prior to the expiration date. (For an application approved prior to January 1, 1995 the conditions stated in section 4.4 shall apply).
 - 9.3.3.2 For a proposal other than a repair, an OSSP shall expire three years after the date of design approval. If a building permit is obtained during the three year period of validity for the OSSP, the OSSP will be valid for three years or as long as the building permit is valid, whichever is greater. (For a permit approved prior to January 1, 1995 the conditions stated in section 4.4 shall apply).
 - 9.3.3.3 An OSSP may be renewed after it has expired if all of the following conditions are met:
 - a) The applicant pays the renewal fee as specified in Appendix A of article I; and
 - b) The applicant demonstrates to the satisfaction of the health officer that there has been no change to the building site or development proposal which had been previously approved; and
 - c) The health officer determines that the previous approval fully complies with all applicable laws in effect at the date of the application for renewal.

- 9.3.3.4 For a repair the OSSA and OSSP shall expire one year after the date of application. An extension of one year may be authorized by the health officer if there are extenuating circumstances, such as difficult site conditions, abnormal rainfall, or difficulty in developing an operation and maintenance manual. If an extension is granted, the requirements that applied at the time of the application will be the applicable standards.
- 9.3.4 Include a reminder on the OSSA of the applicant's right of appeal.
 - 9.3.5 Within 20 working days after submittal of a complete OSSA, either issue an OSSP, disapprove the OSSA or inform the applicant or his/her representative in writing as to the status of the OSSA.
- 9.4 The health officer will allow a temporary repair to be made on a failing system without a repair OSSA and OSSP on those days when the health officer's office is closed and when such repair is essential to the continued use of the system. In such a case the owner of the OSS shall apply for a repair OSSA within five (5) working days after the temporary repair has been made. Such repairs will be subject to any additional requirements necessary to assure the repair meets the provisions of this article.
- 9.5 The health officer may revoke or deny an OSSA or OSSP for the installation of an OSS for due cause. Examples include, but are not limited to:
 - 9.5.1 Exclusion, misrepresentation or concealment of material fact in information submitted to the health officer; or
 - 9.5.2 Site conditions that have changed since the designer and/or health officer reviewed the site; or
 - 9.5.3 Failure to meet conditions of the approval or this article.
- 9.6 Before the health officer issues an OSSP allowing the installation of an OSS to serve either structures on more than one lot or a structure or structures with multiple ownership, the applicant shall show:
 - 9.6.1 An approved public entity owning or managing the OSS in perpetuity; or
 - 9.6.2 An arrangement with a management entity acceptable to the health officer, recorded in covenant, lasting until the on-site system is no longer needed, and containing, but not limited to:
 - 9.6.2.1 A legal easement allowing access for construction, operation and maintenance, and repair of the OSS; and

9.6.2.2 Identification of an adequate financing mechanism to assure the funding of operation, maintenance, and repair of the OSS.

9.7 The health officer shall not delegate the authority to issue permits.

9.8 The health officer may stipulate additional requirements for approval of a particular application if necessary for public health protection.

SECTION 10 LOCATION.

10.1 Persons shall design and install OSS to meet the minimum horizontal separations shown in Table I, Minimum Horizontal Separations:

**TABLE I
MINIMUM HORIZONTAL SEPARATIONS**

Items requiring setback	From edge of disposal component and reserve area	From septic tank, holding tank, containment vessel, pump chamber, and distribution box	From building sewer, collection, and non-perforated distribution line¹
Non-public well or suction line	100 ft.	50 ft.	50 ft.
Public drinking water well	100 ft.	100 ft.	100 ft.
Public drinking water spring ^{2, 3}	200 ft.	200 ft.	100 ft.
Spring or surface water used as drinking water source ^{2, 3}	100 ft.	50 ft.	50 ft.
Pressurized water supply line ⁴	10 ft.	10 ft.	10 ft.
Properly decommissioned well ⁵	10 ft.	N/A	N/A
Surface water ³ Marine water Fresh water	100 ft. 100 ft.	50 ft. 50 ft.	10 ft. 10 ft.
Building foundation	10 ft. ⁶	5 ft. ⁶	2 ft.

Thurston County Board of Health
Rules and Regulations Governing Disposal of Sewage
Article IV

Items requiring setback	From edge of disposal component and reserve area	From septic tank, holding tank, containment vessel, pump chamber, and distribution box	From building sewer, collection, and non-perforated distribution line ¹
Property or easement line ⁶	5 ft.	5 ft.	N/A
Interceptor / curtain drains/ drainage ditches, stormwater drywells Down-gradient ⁷ Up-gradient ⁷	30 ft. 10 ft.	5 ft. N/A	N/A N/A
Down-gradient cut or bank with at least 5 ft. of original, undisturbed soil showing above a restrictive layer due to a structural or textural change ^{7, 8}	25 ft.	N/A	N/A
Down-gradient cut or bank with less than 5 ft. of original, undisturbed, soil showing above a restrictive layer due to a structural or textural change ^{7, 8}	50 ft.	N/A	N/A
Downgradient cut or bank that extends vertically less than 5 feet from the toe of the slope to the top of the slope that doesn't have a restrictive layer showing ^{7, 8}	10 ft.		

¹ "Building sewer" as defined by the most current edition of the Uniform Plumbing Code. "Non-perforated distribution" includes pressure sewer transport lines.

² If surface water is used as a public drinking water supply, the designer shall locate the OSS outside of the required sanitary control area.

- 3 Measured from the ordinary high-water mark.
- 4 The health officer may approve a sewer transport line within 10 feet of a water supply line if the sewer line is constructed in accordance with section 2.4 of the Washington state department of ecology's "Criteria For Sewage Works Design," revised October 1985, as thereafter updated, or equivalent.
- 5 Before any component can be placed within 100 feet of a well, the designer shall submit a "decommissioned water well report" provided by a licensed well driller, which verifies that appropriate decommissioning procedures noted in chapter 173-160 WAC were followed. Once the well is properly decommissioned, it no longer provides a potential conduit to groundwater, but septic tanks, pump chambers, containment vessels or distribution boxes should not be placed directly over the site.
- 6 The health officer may allow a reduced horizontal separation to not less than two feet where the property line, easement line, or building foundation is up-gradient.
- 7 The item is down-gradient when liquid will flow toward it upon encountering a water table or a restrictive layer. The item is up-gradient when liquid will flow away from it upon encountering a water table or restrictive layer.
- 8 This setback is unrelated to setbacks that are necessary for slope stability or other purposes.
- 10.2 Where any condition indicates a greater potential for contamination or pollution, the health officer may increase the minimum horizontal separations. Examples of such conditions include excessively permeable soils, unconfined aquifers, shallow or saturated soils, dug wells, and improperly abandoned wells.
- 10.3 The horizontal separation between an OSS disposal component and an individual water well, spring, or surface water can be reduced to a minimum of 75 feet, upon signed approval by the health officer if the applicant demonstrates:
 - 10.3.1 Adequate protective site specific conditions, such as physical settings with low hydro-geologic susceptibility from contaminant infiltration. Examples of such conditions include evidence of confining layers and or aquatards separating any potable water from the OSS treatment zone or there is an excessive depth to groundwater; or
 - 10.3.2 Design and proper operation of an OSS system assuring enhanced treatment performance beyond that accomplished by meeting the vertical separation and effluent distribution requirements described in Table IV in subsection 12.2.6 of this article; or

Thurston County Board of Health
Rules and Regulations Governing Disposal of Sewage
Article IV

- 10.3.3 Evidence of protective conditions involving both subsections 10.3.1 and 10.3.2.
- 10.4 Persons shall design and/or install disposal components only where:
 - 10.4.1 The slope is less than forty-five percent (twenty-four degrees); and
 - 10.4.2 The area is not subject to any of the following:
 - 10.4.2.1 Encroachment by buildings or construction such as placement of swimming pools, power poles and underground utilities;
 - 10.4.2.2 Cover by impervious material;
 - 10.4.2.3 Vehicular traffic;
 - 10.4.2.4 Other activities adversely affecting the soil or the performance of the OSS; and
 - 10.4.3 Sufficient reserve area for replacement exists to treat and dispose 100% of the design flow; and
 - 10.4.4 The land is stable; and
 - 10.4.5 Surface drainage is directed away from the site.
- 10.5 Upon request and submission of an application on forms provided, the health officer may review:
 - 10.5.1 An individual lot to determine the lot's potential for the installation of an OSS (On-site Evaluation Only).
 - 10.5.1.1 In addition to the application, the following shall be submitted:
 - 10.5.1.1.1 A site plan showing the lot's location and dimensions and the location of soil test pits. Soil test pits shall be dug as per subsections 9.1.3.11 and 11.3 of this article; and
 - 10.5.1.1.2 A fee as specified in Appendix A of article I.
 - 10.5.1.2 This application and review shall be completely separate from an OSSA process and shall constitute neither a valid application for purposes of future vesting nor permission from the health officer to install an OSS.

- 10.5.2 A proposed development, prior to the submittal of a formal landuse application, that proposes using OSS.
- 10.5.2.1 In addition to the application, the following shall be submitted:
 - 10.5.2.1.1 A site plan showing the property's location and dimensions and the location of soil test pits. Soil test pits shall be dug as per subsections 9.1.3.11 and 11.3 of this article; and
 - 10.5.2.1.2 A fee as stated in Appendix A of article I.
- 10.5.2.2 This application and review shall constitute neither a valid application for purposes of future vesting nor permission from the health officer to install an OSS.

SECTION 11 SOIL AND SITE EVALUATION

- 11.1 The health officer shall permit only engineers, designers, registered sanitarians, and registered soil scientists (American registry of certified professionals in agronomy, crops, and soils) to perform soil and site evaluations. The health officer may also perform soil and site evaluations.
- 11.2 The person evaluating the soil and site shall:
 - 11.2.1 Record all of the following:
 - 11.2.1.1 Unless a reduced number of soil logs is authorized by the health officer, observed conditions in soil logs from at least:
 - 11.2.1.1.1 Two test pits in the initial disposal component; and
 - 11.2.1.1.2 One test pit in the reserve area.
 - 11.2.1.2 The ground water conditions, the date of the observation, and the probable maximum height;
 - 11.2.1.3 The topography of the site;
 - 11.2.1.4 The drainage characteristics of the site;
 - 11.2.1.5 The existence of structurally deficient soils subject to major wind or water erosion events such as slide zones and dunes;

- 17.5.3 Comply with all local and state requirements stipulated in the OSSP and the operational certificate issued for the system.

SECTION 18 EXPANSIONS.

The health officer shall require an on-site sewage system and a reserve area in full compliance with the new system construction standards specified in this article for an expansion of a residence or other facility.

SECTION 19 ABANDONMENT.

Persons permanently removing a septic tank, seepage pit, cesspool, or other sewage container from service shall:

- 19.1 Have the septage removed by a certified pumping firm;
- 19.2 Remove or destroy the lid; and
- 19.3 Fill the void with soil.

SECTION 20 SEPTAGE MANAGEMENT.

- 20.1 Only pumping firms certified by the health officer as per subsection 23.3 of this article shall remove septage from an OSS.
- 20.2 A pumping firm removing septage from an OSS shall:
 - 20.2.1 Transport septage or sewage only in vehicles clearly identified with the name of the business and approved by the health officer;
 - 20.2.2 Record and report septage removal to the health officer;
 - 20.2.3 Dispose of septage, or apply septage biosolids to land only in a manner consistent with applicable laws.

SECTION 21 DEVELOPMENTS, SUBDIVISIONS, AND MINIMUM LAND AREA REQUIREMENTS.

- 21.1 A person proposing any development shall obtain approval from the health officer prior to any development where the use of OSS is proposed. Any new development proposing to use OSS shall be required to have an OSS which meets new construction standards.
- 21.2 The health officer shall require the following prior to approving any development:

Thurston County Board of Health
Rules and Regulations Governing Disposal of Sewage
Article IV

21.2.1 Site evaluations as required under section 11 of this article. This may include information gained in a project review as noted in subsection 10.5 of this article;

21.2.2 Where a subdivision with individual wells is proposed:

21.2.2.1 Configuration of each lot to allow a 100-foot radius water supply protection zone to fit within the lot lines; or

21.2.2.2 Establishment, through protective or restrictive covenants, as appropriate, of a 100-foot protection zone around each existing and proposed well site. Such zones shall be shown on the final plat map.

21.2.3 Where a subdivision to be served by a community well or wells is proposed, all requirements of WAC 246-290 and WAC 246-291 shall be met. This will include wellhead protection when applicable.

21.2.4 Where preliminary approval of a subdivision is requested, provision of at least one soil log per proposed lot, unless the health officer determines existing soils information allows fewer soil logs;

21.2.5 Determination of the minimum lot size or minimum land area required for the development using Method I and/or Method II:

21.2.5.1 **METHOD I.** Table VII, Single Family Residence Minimum Lot Size or Minimum Land Area Required Per Unit Volume of Sewage, shows the minimum lot size required per single family residence. For developments other than single family residences, the minimum land areas shown are required for each unit volume of sewage.

TABLE VII
MINIMUM LAND AREA REQUIREMENT
SINGLE FAMILY RESIDENCE OR UNIT VOLUME OF SEWAGE

Type of Water Supply	Soil Type (defined by section 11 of this article) ¹					
	1A, 1B	2A, 2B	3	4	5	6
Public	0.5 acre ²	12,500 sq. ft.	15,000 sq. ft.	18,000 sq. ft.	20,000 sq. ft.	22,000 sq. ft.
Individual, on or to each lot	1 acre ²	1 acre	1 acre	1 acre	2 acres	2 acres

1 When an OSS is proposed to be installed in soil types 1B or 2 through 4 that are included in the list of Category I soil series in Chapter 17.15 of the Thurston County Code (Critical Areas Ordinance), pressure distribution is required, at a minimum. In addition, for those Category I soil series the minimum lot size restrictions found in Table 3 of Chapter 17.15 shall apply, and any lots less than 1 acre in size must be served by a public water system and an OSS meeting Treatment Standard 2.

2 Due to the highly permeable nature of type 1A soil, only alternative systems which meet or exceed Treatment Standard 2 can be installed.

21.2.5.2 **METHOD II.** A minimum land area proposal using Method II is acceptable only when the applicant:

21.2.5.2.1 Justifies the proposal through a written analysis of the:

21.2.5.2.1.1 Soil type and depth;

21.2.5.2.1.2 Area drainage, and/or lot drainage;

21.2.5.2.1.3 Public health impact on ground and surface water quality;

21.2.5.2.1.4 Setbacks from property lines, water supplies, etc;

21.2.5.2.1.5 Source of domestic water;

21.2.5.2.1.6 Topography, geology, and ground cover;

21.2.5.2.1.7 Climatic conditions;

21.2.5.2.1.8 Availability of public sewers;

21.2.5.2.1.9 Activity or land use, present, and anticipated;

21.2.5.2.1.10 Growth patterns;

21.2.5.2.1.11 Reserve areas for additional subsurface treatment and disposal;

21.2.5.2.1.12 Anticipated sewage volume;

21.2.5.2.1.13 Compliance with current planning and zoning requirements;

Thurston County Board of Health
Rules and Regulations Governing Disposal of Sewage
Article IV

- 21.2.5.2.1.14 Possible use of alternative systems or designs;
- 21.2.5.2.1.15 Existing encumbrances, such as listed in subsections 9.1.3.5 and 11.2.1.7; and
- 21.2.5.2.1.16 Any other information required by the health officer.
- 21.2.5.2.2 Shows development with public water supplies having:
 - 21.2.5.2.2.1 At least 12,500 square feet lot sizes per single family residence; and
 - 21.2.5.2.2.2 No more than 3.5 unit volumes of sewage per day per acre for developments other than single family residences.
 - 21.2.5.2.3 Shows development with individual water supplies having at least one acre per unit volume of sewage; and
 - 21.2.5.2.4 Shows land area under surface water is not included in the minimum land area calculation.
- 21.2.6 Regardless of which method is used for determining required minimum lot sizes or minimum land area, the maximum density permitted is 3.5 single family residences or unit volumes per acre. The applicant or his/her representative shall submit to the health officer information consisting of field data, plans, and reports supporting a conclusion the land area provided is sufficient to:
 - 21.2.6.1 Install conforming OSS;
 - 21.2.6.2 Assure preservation of reserve areas for proposed and existing OSS;
 - 21.2.6.3 Properly treat and disposal of the sewage; and
 - 21.2.6.4 Minimize public health effects from the accumulation of contaminants in surface and ground water.
- 21.2.7 Evidence that a minimum of twenty-four (24) inches of original, undisturbed and unsaturated soil exists above the maximum

seasonal water table, a layer of creviced or porous bedrock, or any other restrictive layer. Certain climatic, soil permeability, slope and system configuration factors can exist which would indicate that the required depth may be increased or decreased. In order to decrease the depth, sufficient technical justification must be developed and submitted that will:

- 21.2.7.1 Allow installation of conforming OSS;
- 21.2.7.2 Assure preservation of reserve areas for all proposed and existing OSS;
- 21.2.7.3 Assure proper treatment and dispose of the sewage;
- 21.2.7.4 Assure preservation of sufficient areas with sufficient soil depths will exist in proposed drainfield and reserve areas, as well as areas immediately downslope, when the system is ready to be installed; and
- 21.2.7.5 Assure minimizing of adverse public health effects from the accumulation of contaminants in surface and ground water.
- 21.2.8 The proposal is consistent with requirements in city sewerage plans and/or the Thurston County Sewerage General Plan, depending on the project's location.
- 21.3 The health officer shall require lot areas of 12,500 square feet or larger except when a person proposes:
 - 21.3.1 OSS within the boundaries of a recognized sewer utility having a finalized assessment roll; or
 - 21.3.2 A planned unit development with:
 - 21.3.2.1 A signed, notarized, and recorded deed covenant restricting any development of lots or parcels above the approved density with the density meeting the minimum land area requirements of subsection 21.2.5 of this article; and
 - 21.3.2.2 A public entity responsible for operation and maintenance of all the OSS, or a single individual owning all the OSS; and
 - 21.3.2.3 Management requirements under section 8 of this article when installing a LOSS; and

- 21.3.2.4 An overall density not greater than 3.5 single family residences or unit volumes per acre; and
- 21.3.2.5 Extinguishment of the deed covenant and higher density development allowed only when the development connects to public sewers.

21.4 The health officer may:

- 21.4.1 Allow inclusion of the area to the centerline of a road or street right-of-way in a Method II determination under subsection 21.2.5.2 of this article to be included in the minimum land area calculation if:

- 21.4.1.1 The dedicated road or street right-of-ways are along the perimeter of the development; and

- 21.4.1.2 The road or street right-of-ways are dedicated as part of the proposed development; and

- 21.4.1.3 Lots are at least 12,500 square feet in size.

- 21.4.2 Require a preliminary design for one or more proposed lots prior to preliminary or final approval of subdivision proposals in order to verify that a proposed lot or lots can meet the requirements of this article. If a preliminary design is required, the following shall apply:

- 21.4.2.1 At a minimum, the following is required:

- 21.4.2.1.1 Lot corners shall be marked and shown on the preliminary design;

- 21.4.2.1.2 Test pits shall be dug where the disposal component and the reserve area are proposed to be located on each lot for purposes of developing soil logs;

- 21.4.2.1.3 After the soils investigation, the project designer shall submit a design to the health officer for each lot indicating the proposed locations of the disposal component and the reserve area and the specifications of the disposal component.

- 21.4.2.2 Upon finding a preliminary design acceptable, the health officer shall approve the preliminary design. The approval of the preliminary design indicates that, for subdivision purposes, the proposed lot or lots can meet the

- requirements of this article. It shall not be considered part of an OSSA and does not give authorization to obtain an OSSP or a building permit;
- 21.4.2.3 A preliminary design shall be considered valid for a period of three years from the date it was submitted regardless if it received preliminary approval;
- 21.4.2.4 A fee shall be charged that covers the cost of evaluating the proposed lots, soils, and preliminary design as per Appendix A of article I.
- 21.4.3 Require larger land areas or lot sizes to achieve public health protection.
- 21.4.4 Prohibit development on individual lots within the boundaries of an approved subdivision if the proposed OSS design does not protect public health by meeting requirements of these regulations.
- 21.4.5 Permit the installation of an OSS, where the minimum land area requirements or lot sizes cannot be met, only when all of the following criteria are met:
- 21.4.5.1 The lot is registered as a legal lot of record created prior to January 1, 1995; and
- 21.4.5.2 The lot is outside an area of special concern where minimum land area has been listed as a design parameter necessary for public health protection; and
- 21.4.5.3 The proposed system meets all requirements of these regulations other than minimum land area.
- 21.5 When a COSS or a LOSS will be used, the person responsible for the subdivision shall accomplish one of the following prior to final approval of the plat:
- 21.5.1 Install the COSS or LOSS and obtain approval by the appropriate agencies; or
- 21.5.2 Provide a bond in favor of the department and sign an agreement with the department. The bond and agreement shall guarantee that construction will be completed within one (1) year from the date of the approval of the agreement. The bond shall be from a reputable bonding company on a satisfactory form and in an amount based on an estimate prepared by an engineer or designer, plus thirty-five (35) percent (20% for a two-year inflationary period plus 10% for contract expenditures plus 5% for

administrative costs). The bond and agreement shall be to the satisfaction of the department and other applicable agencies and the department's legal counsel. The health officer may release a portion of the bond or surety when he/she is satisfied that a portion of the project is complete and has been certified by the appropriate agency or person. The portion(s) released shall not be in increments less than thirty-five (35) percent of the project cost.

SECTION 22 AREAS OF SPECIAL CONCERN.

- 22.1 The health officer may investigate and take appropriate action to minimize public health risk in formally designated areas such as:
- 22.1.1 Shellfish protection districts or shellfish growing areas;
 - 22.1.2 Sole Source Aquifers designated by the U.S. Environmental Protection Agency;
 - 22.1.3 Areas with a critical recharging effect on aquifers used for potable water as designated under Chapter 17.15 of the Thurston County Code (Critical Areas Ordinance);
 - 22.1.4 Designated public water supply wellhead protection areas;
 - 22.1.5 Up-gradient areas directly influencing water recreation facilities designated for swimming in natural waters with artificial boundaries within the waters as described by the Water Recreation Facilities Act, chapter 70.90 RCW;
 - 22.1.6 Areas designated by the Washington state department of ecology as special protection areas under chapter 173-200-090 WAC, Water Quality Standards for Ground Waters of the State of Washington;
 - 22.1.7 Wetland areas under production of crops for human consumption;
 - 22.1.8 Frequently flooded areas delineated by the Federal Emergency Management Agency; and,
 - 22.1.9 Areas identified and delineated by the board of health in consultation with the secretary to address public health threats from on-site systems.
- 22.2 The board of health may impose more stringent requirements on new development and corrective measures to protect public health upon existing developments in areas of special concern, including:

- 22.2.1 Additional location, design, and/or performance standards for OSS;
- 22.2.2 Larger land areas for new development;
- 22.2.3 Prohibition of development;
- 22.2.4 Additional operation, maintenance, and monitoring of OSS performance;
- 22.2.5 Requirements to upgrade existing OSS;
- 22.2.6 Requirements to abandon existing OSS; and
- 22.2.7 Monitoring of ground water or surface water quality.
- 22.3 Within areas of special concern, to reduce risk of system failures, a certified monitoring firm shall:
 - 22.3.1 Inspect every OSS at least once every four years;
 - 22.3.2 Submit the following written information to both the department and the property owner within 30 days following the inspection:
 - 22.3.2.1 Location of the tank;
 - 22.3.2.2 Structural condition of the tank, including baffles;
 - 22.3.2.3 Depth of solids in the tank;
 - 22.3.2.4 Problems detected with any part of the system;
 - 22.3.2.5 Maintenance needed;
 - 22.3.2.6 Maintenance provided at time of inspection; and
 - 22.3.2.7 Other information as required by the department.
 - 22.3.3 Immediately report failures to the department.

**SECTION 23 CERTIFICATION OF DESIGNERS, INSTALLERS, PUMPER, INSPECTORS,
AND MAINTENANCE PERSONNEL**

[With the exception of subsections 23.1.1, 23.6.9, and 23.6.10 the requirements in this section shall not be applicable to engineers or registered sanitarians].